

IN RE: PETITION FOR ZONING VARIANCE  
NE/S South Hilltop Road, 170' N  
of the c/l of Woodwind Road  
(Lot 1 of CaineWood)  
1st Election District  
1st Councilmanic District  
Eugene Osborne, Sr.  
Petitioner

\* BEFORE THE  
\* DEPUTY ZONING COMMISSIONER  
\* OF BALTIMORE COUNTY  
\* Case No. 93-84-A

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Zoning Variance filed by the legal owner of the subject property, Eugene Osborne, Sr. The Petitioner requests a variance from Section 1801.2.B of the Baltimore County Zoning Regulations (B.C.Z.R.) (Section V.B.5.a of the Comprehensive Manual of Development Policies (C.M.D.P.)) to permit a windowed building face to tract boundary setback of 10 feet in lieu of the minimum required 35 feet for proposed Lot 1, in accordance with Petitioner's Exhibit 1.

Appearing on behalf of the Petition were Eugene F. and Jennys A. Osborne, Sr., property owners, and Joseph Larson, with Spellman, Larson and Associates. Appearing as Protestants in the matter were Milton R. Lang, John E. Brady, and Rudolph Berg, nearby property owners.

Testimony indicated that the subject property, known as Lot 1 of CaineWood, consists of 0.83 acres, more or less, is split zoned D.R. 5.5 and D.R. 2 and is presently unimproved. Said property is located on South Hilltop Road near its intersection with Woodwind Road. The Petitioners are desirous of developing the property with a single family dwelling within the proposed building envelope shown on Petitioner's Exhibit 1. Testimony indicated that the requested variance is necessary for proposed Lot 1 due to the location of a proposed access road, identified as CaineWood Court

on Petitioner's Exhibit 1, between proposed Lots 2 and 3. Mr. Larson testified that Baltimore County required said access road be located directly across from Woodwind Road and as a result, the Petitioner was unable to situate two lots on the north side of the proposed access road. Testimony indicated the relief requested would allow the proposed dwelling for Lot 1 to be constructed in conformity with those structures already existing in this community. Various photographs were submitted into evidence depicting the houses already existing along South Hilltop Road across from the subject site. Said dwellings are spaced approximately 20 feet apart and are uniform in their setback and spacing. Mr. Larson testified that the Petitioner seeks only to maintain the current spacing and character of the surrounding community.

The Protestants testified that they are opposed to the Petitioner's request. They testified that because Baltimore County requires a 35-foot setback, the Petitioner should be held to abide by that standard. They further stated that there is no natural obstruction which requires a variance to be granted and that the necessity for the variance is self-created by the Petitioner.

It should be noted from looking at the site plan that the building envelope for proposed Lot 1 is substantially wider than that provided for Lots 2, 3 and 4. The building envelope for Lot 1 is approximately 49.86 feet in width whereas the building envelopes for Lots 2, 3 and 4 are approximately 40 feet in width each. Therefore, in order to maintain consistency in the proposed development, the building envelope for Lot 1 should be reduced to 40 feet in width. The Petitioner would then only need a setback variance of 19.86 feet as opposed to the 10 feet they requested. In the opinion of this Deputy Zoning Commissioner, a setback of

19.86 feet from the tract boundary line will still enable the Petitioner to construct a dwelling on Lot 1 that will be consistent with those proposed for Lots 2, 3 and 4. Therefore, the relief requested shall be modified and a setback variance of 19.86 feet in lieu of the required 35 feet shall be granted.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. Mullan v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

It is clear from the testimony that if the variance is granted, as modified, such use, as proposed, will not be contrary to the spirit of the B.C.Z.R. and will not result in any injury to the public good.

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship will result if a variance is not granted. However, a variance of 19.86 feet in lieu of the requested 10 feet shall be granted. It has been established that special circumstances or conditions exist that are peculiar to the land or structure which is the subject of this variance request and that the re-

quirements from which the Petitioner seeks relief will unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the variance granted will not cause any injury to the public health, safety or general welfare. Further, the granting of the Petitioner's request is in strict harmony with the spirit and intent of the B.C.Z.R.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the variance requested, as modified herein, should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 9th day of November, 1992 that the Petition for Zoning Variance requesting relief from Section 1801.2.B of the Baltimore County Zoning Regulations (B.C.Z.R.) (Section V.B.5.a of the Comprehensive Manual of Development Policies (C.M.D.P.)) to permit a windowed building face to tract boundary setback of 19.86 feet in lieu of the minimum required 35 feet for a proposed dwelling, in accordance with the revised site plan to be submitted, be and is hereby GRANTED, subject to the following restrictions:

- 1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.
- 2) Prior to the issuance of any building permits, Petitioner shall submit a revised site plan incorporating the relief granted herein and the adjusted layout of the building envelope for Lot 1 of CaineWood.
- 3) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

Timothy M. Kottoco  
Deputy Zoning Commissioner  
for Baltimore County

TMK:bjs

Baltimore County Government  
Zoning Commissioner  
Office of Planning and Zoning

November 9, 1992

(410) 887-4386

Suite 113 Courthouse  
400 Washington Avenue  
Towson, MD 21204

Mr. Eugene Osborne, Sr.  
P.O. Box 423  
Westminster, Maryland 21157

RE: PETITION FOR ZONING VARIANCE  
E/S South Hilltop Road, 170' N of the c/l of Woodwind Road  
(125 South Hilltop Road)  
1st Election District - 1st Councilmanic District  
Eugene Osborne, Sr. - Petitioner  
Case No. 93-84-A

Dear Mr. Osborne:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Zoning Variance has been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 887-3351.

Very truly yours,

Timothy M. Kottoco  
TIMOTHY M. KOTTOCO  
Deputy Zoning Commissioner  
for Baltimore County

TMK:bjs  
cc: Mr. Milton R. Lang  
202 S. Hilltop Road, Baltimore, Md. 21228

Mr. John E. Brady  
108 Woodwind Road, Baltimore, Md. 21228

Mr. Rudolph Berg  
116 Woodwind Road, Baltimore, Md. 21228

Mr. Joseph Larson  
105 W. Chesapeake Avenue, Towson, Md. 21204

People's Counsel: File



## Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at #125 SOUTH HILLTOP RD  
which is presently zoned DR 5.5

This Petition shall be filed with the Office of Zoning Administration & Development Management.  
The undersigned, legal owner(s) of the property situated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) (1971-Mar. 1992 Regulations) 1801.2.B (V.B.5.a C.M.D.P.) to permit a building face to tract boundary setback of 10' in lieu of the minimum 35'

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County, for the following reasons: (Indicate hardship or practical difficulty)

Conformance to the current regulations would require the property in question to be oversized and out of character with the general neighborhood

Property is to be posted and advertised as prescribed by Zoning Regulations.  
I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchaser/Lessee:

NA

(Type or Print Name)

Signature

Address

City

State

Zipcode

Attorney for Petitioner:

(Type or Print Name)

Signature

Address

City

State

Zipcode

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Legal Owner(s):

EUGENE OSBORNE SR

(Type or Print Name)

Signature

Address

City

State

Zipcode

P O BOX 423 848-0861

WESTMINSTER MD 21157 Phone No:

City

Name, Address and phone number of legal owner, contract purchaser or representative

JOSEPH LARSON

105 W CHESAPEAKE AVE

TOWSON MD 21204

Address Phone No: 823-3535

OFFICIAL USE ONLY

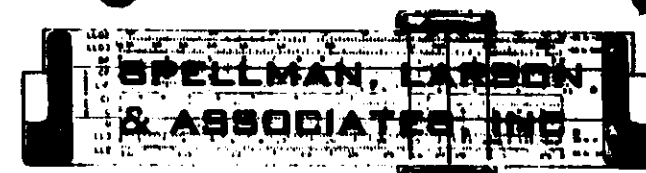
ESTIMATED LENGTH OF HEARING

Available for Hearing

on the following date: \_\_\_\_\_ Read Two Minutes

ALL OTHER: \_\_\_\_\_

REVIEWED BY: LG DATE: 9/3/92



SUITE 109 - JEFFERSON BUILDING  
105 W. CHESAPEAKE AVENUE  
TOWSON, MARYLAND 21204  
TEL 823-3535  
FAX 825-5215

ROBERT E. SPELLMAN P.L.C.  
JOSEPH L. LARSON  
ERIC D. FRANK  
JO ANN W. BOONE

### DESCRIPTION FOR A VARIANCE TO ZONING, OSBORNE PROPERTY,

SOUTH HILLTOP ROAD, SOUTH OF FREDERICK ROAD,

FIRST DISTRICT, BALTIMORE COUNTY, MARYLAND

for proposed Lot # 1 variance Page 1

Beginning for the same at a point on the northeast side of South Hilltop Road, 50 feet wide, at the distance of 170 feet, more or less, measured northwesterly along the northeast side of South Hilltop Road from the centerline of Woodwind Road and running thence North 77 Degrees 28 Minutes 25 Seconds East 110 feet South 12 Degrees 31 Minutes 35 Seconds East 329.86 feet and South 77 Degrees 28 Minutes 25 Seconds West 110 feet to the northeast side of South Hilltop Road herein referred to and running thence and binding on the northeast side of South Hilltop Road North 12 Degrees 31 Minutes 35 Seconds West 329.86 feet to the place of beginning.

Containing 0.83 acres of land, more or less.

08/31/92



RESIDENTIAL & COMMERCIAL DEVELOPMENT DESIGN • LAND SURVEYING  
LAND PLANNING • SUBDIVISION LAYOUT • FEASIBILITY STUDIES • ESTIMATING  
GRADING STUDIES • LOCATION SURVEYS • TECHNICAL CONSULTATION

### CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

District: 127 Date of Posting: 9/15/92  
Posted for: Variances  
Petitioner: Eugene Osborne, Sr.  
Location of property: E/S S. Hilltop Rd. (125) 120' of Woodwind Rd.  
Location of Sign: Facing road way on property of Petitioner  
Remarks: \_\_\_\_\_  
Posted by: Timothy M. Kottoco Date of return: 12/1/92  
Number of Signs: 1

### CERTIFICATE OF PUBLICATION

TOWSON, MD., 9/24, 1992

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 9/24, 1992.

THE JEFFERSONIAN,

S. Zake Orlov  
Publisher

62.62



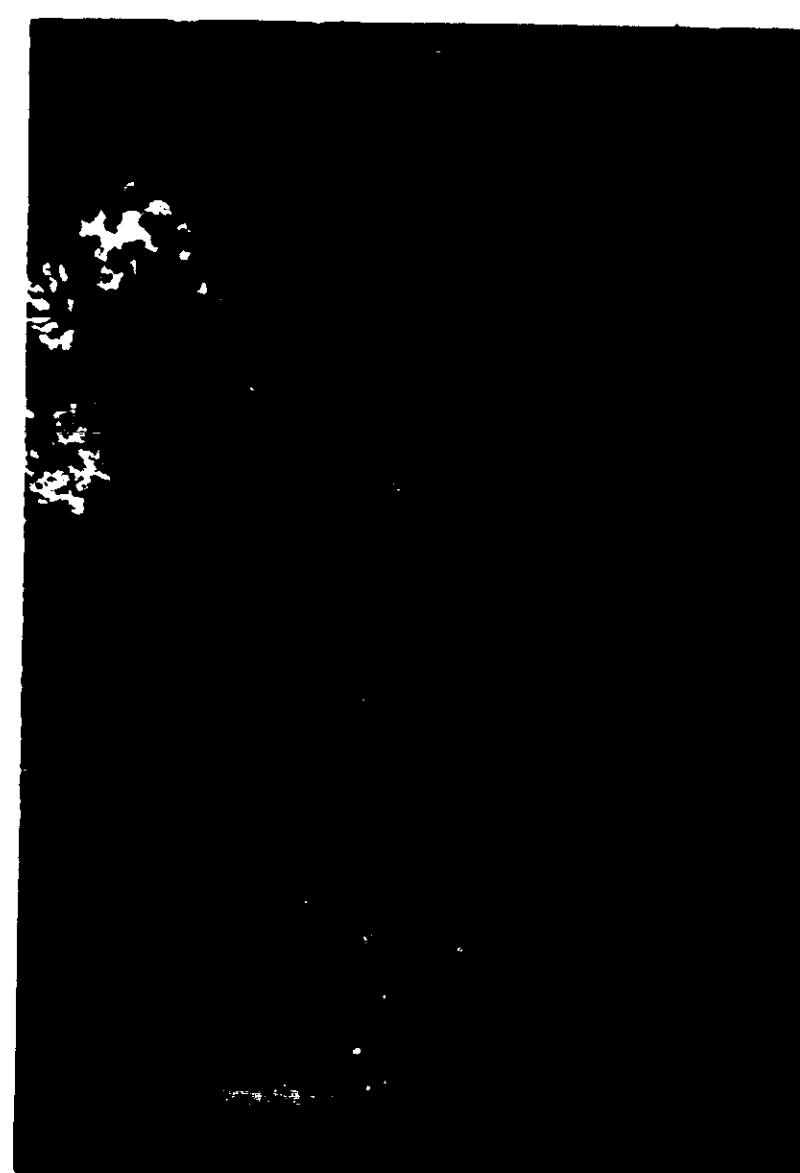




**PETITIONER(S) SIGN-IN SHEET**

[illegible]

PROPERTY LINE  
FROM ADJACENT PROPERTY



PROPERTY LINE  
FROM ROAD.

ZONING NOTICE  
93-84-A

**PETITION**

WE THE UNDERSIGNED, STRONGLY OPPOSE THE ZONING VARIANCE FOR THE "CAINWOOD" COMMUNITY FORMERLY KNOWN AS THE OSBORNE PROPERTY, LOCATED ON SOUTH HILLTOP RD. IN CATONSVILLE, MARYLAND 21228. THE OPPOSITION IS BASED ON THE ZONING LAW WHICH REQUIRES A 35 FOOT SETBACK FROM ADJOINING PROPERTY LINES.

[illegible]

Rot Ex #2

## PETITION

WE THE UNDERSIGNED, STRONGLY OPPOSE THE ZONING VARIANCE FOR THE "CAINWOOD" COMMUNITY FORMERLY KNOWN AS THE OSBORNE PROPERTY, LOCATED ON SOUTH HILLTOP RD. IN CATONSVILLE, MARYLAND 21228. THE OPPOSITION IS BASED ON THE ZONING LAW WHICH REQUIRES A 35 FOOT SETBACK FROM ADJOINING PROPERTY LINES.

NAME	ADDRESS	NAME	ADDRESS
W. Peterson	109 Woodward Rd.	W. Logg	1903 Loggins Rd.
Michael J. Potts	107 Woodward Rd.	Ray Cooper	1903 Loggins Rd.
John D. Buttram	109 Woodward Rd.	John Brady	108 Woodward Rd.
Bela Knudsen	104 Woodward Rd.	Marie B. Carl	103 Woodward Rd.
John J. Darnan	107 Woodward Rd.	Marj. Carl	103 Woodward Rd.
William B. Darnan	107 Woodward Rd.	W. J. Kelsen	1904 Loggins Rd.
Ernest Hansen	110 Woodward Rd.	J. Gustafson	112 S. Hilltop Rd.
Paul H. Berg	116 Woodward Rd.	J. Archer	112 S. Hilltop Rd.
Eva Jean Berg	116 Woodward Rd.	D. Vincent	200 S. Hilltop Rd.
Ernest Schuch	111 Woodward Rd.		
Arne M. Toph	208 Rollingbrook Way		
Walter Gustafson	112 Woodward Rd.		
Wm. J. Gustafson	112 Woodward Rd.		
John William Kinn	107 Woodward Rd.		
Sharon Darnan	107 Woodward Rd.		
Keith Brady	108 Woodward Rd.		
Cheryl Haglund	106 Woodward Rd.		
Karen Haglund	106 Woodward Rd.		
Walter Roe	102 Woodward Rd.		
Joan Roe	102 Woodward Rd.		
Joe Hennick	1907 Loggins Rd.		
Ann Hennick	1907 Loggins Rd.		
Christ Hennick	1907 Loggins Rd.		
B. Skjerve	1906 Loggins Rd.		
E. Miller	1906 Loggins Rd.		
John Miller	1902 Loggins Rd.		

**PETITION**

WE THE UNDERSIGNED, STRONGLY OPPOSE THE ZONING VARIANCE FOR THE "CAINWOOD" COMMUNITY FORMERLY KNOWN AS THE OSBORNE PROPERTY, LOCATED ON SOUTH HILLTOP RD. IN CATONSVILLE, MARYLAND 21228. THE OPPOSITION IS BASED ON THE ZONING LAW WHICH REQUIRES A 35 FOOT SETBACK FROM ADJOINING PROPERTY LINES.

NAME	ADDRESS	NAME	ADDRESS
Lou Ann Dismore	126 S Hilltop Rd.	D. Vincent	800 S. Hilltop Rd.
Fairbank Carbonneau	1904 Regent St.		
Ramona Thayer	116 S Hilltop Rd.		
Eugene F. Thayer	116 S Hilltop Rd.		
Susan M. Boyd	114 S Hilltop Rd.		
John Rugh	114 S Hilltop Rd.		
Norlene Young	111 S Hilltop Rd.		
Arlene McKinney	110 S Hilltop Rd.		
Kathleen Foster	104 S Hilltop Rd.		
Elizabeth A. Baker	104 S Hilltop Rd.		
Betty B. Baker	104 S Hilltop Rd.		
Bruce W. Branson	12 Hilltop Place 2122B		
Margaret & Eugene	10 Hilltop Pl 2122A		
Margaret & Eugene	5 Hilltop Pl 2122C		
Myra Mae Baker	6 Hilltop Pl 2122D		
Betty Baker	6 Hilltop Pl 2122E		
Lorraine Pauline	4 Hilltop Rd 2122F		
Donna & Bruce	4 Hilltop Pl 2122G		
Bob & Peg	122 S Hilltop Rd.		
Marjorie Sherry	122 S Hilltop Rd.		
Wendy Young	118 S Hilltop Rd.		
Wendy Ruston	128 S Hilltop Rd.		
Donna LaBelle	124 S Hilltop Rd.		
Maureen Baker	124 S Hilltop Rd.		
Willie A.	120 S Hilltop Rd.		

Zoning Commissioner  
Baltimore County  
Towson, Maryland

October 15, 1992


Zoning Notice 93-84-A

Dear Sir,

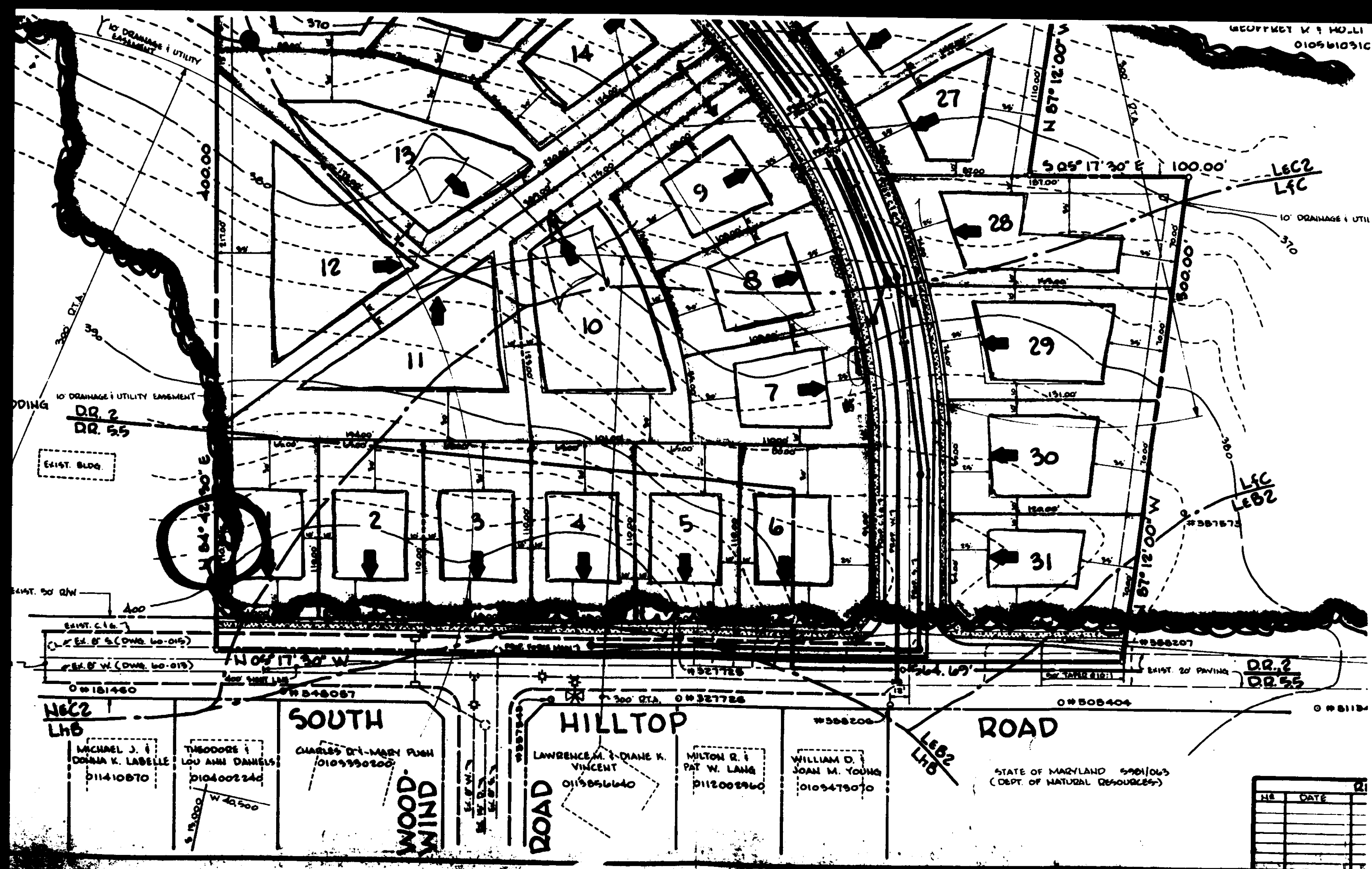
On behalf of the communities of Woodwind and Rollingwood I enter this formal protest against the request for a zoning variance on the property known as Cainwood formerly the Woodwind Property. This property is zoned R-1, allowing land use which requires that thirty five (35) foot setback be maintained from tract to tract and dwellings on adjacent property lines. The 35 foot requirement provides a significant buffer between the Woodwind and Rollingwood adjacent tract property. If a ten (10) foot buffer is allowed future development of adjacent tracts/properties would be adversely impacted. The community does not believe that the proposed variance would be in compliance with the law abiding by the existing zoning law. If the developer claims that such a hardship does exist, it is self imposed. The communities of Woodwind and Rollingwood are in agreement and I submit that the area zoning maps are evidence of the low density nature of the communities. The most reasonable approach is to keep the pattern of development consistent with the existing zoning. The proposed variance is in violation and is not appropriate in light of the potential future development of the adjoining properties and the precedence which this variance would set. I am an owner of two lots in the Woodwind community and I am a member of the Woodwind community signed by a members of the community opposing this change. The photographs point out that a 35 foot buffer of established trees and shrubs exists with the existing community and does not impose any hardship.

The community of approximately 150 homes which I represent strongly urges the zoning board to adhere to the rules and laws in place and deny this request.

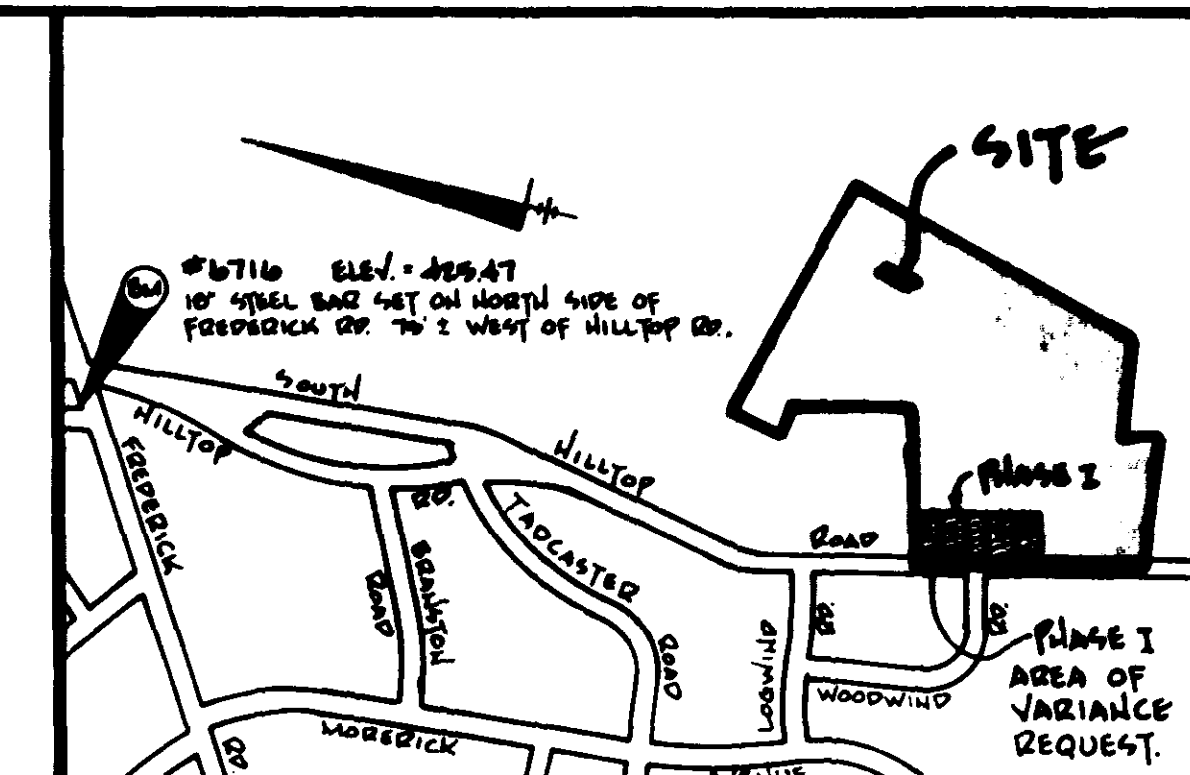
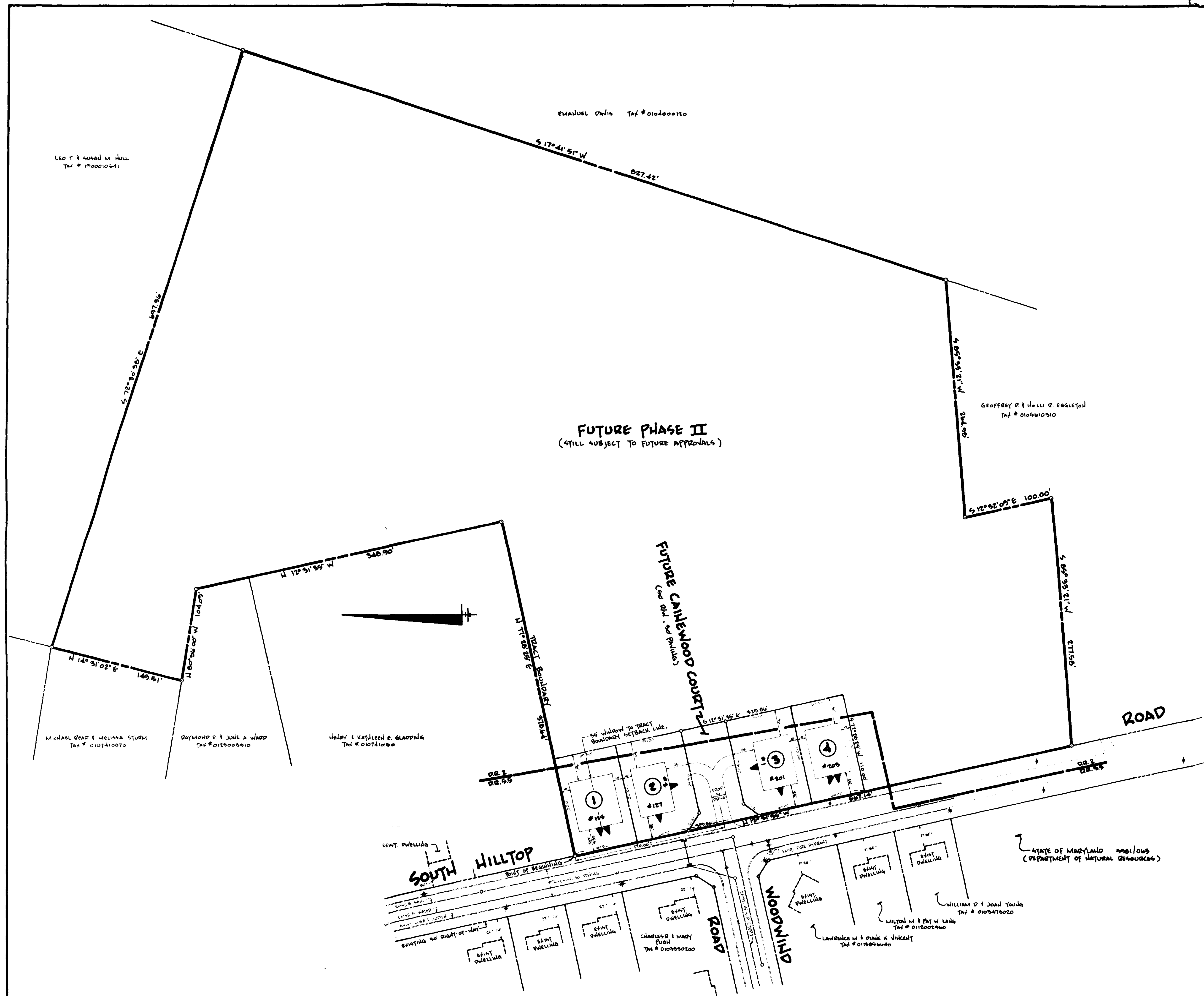
Sincerely,

  
Milton R. Lang  
202 S. Hilltop Rd.  
Baltimore, Maryland 21228

Prot Ex #3







VICINITY MAP  
SCALE: 1"=500'

### SITE DATA

ACREAGE: GROSS = 19.926 AC.  
NET = 19.926 AC.  
ZONING: DR. 2 = 18.946 AC.  
DR. 55 = 0.980 AC.  
USE: EXISTING = VACANT  
PROPOSED = RESIDENTIAL  
COUNCILMANIC DISTRICT: 1  
PRIOR ZONING HEARINGS: None  
PROP. LOT #1 = 7,678 SQ. FT. OR 0.176 AC. (MIXED DR. 2 & DR. 55)  
PUBLIC WATER & SEWER:  
NOT IN A CRITICAL AREA.  
ZONING MAP: SW 4-G  
APPROVED CRG: Planning, 1-800  
8-8-91 PUBLIC SERVICES, 90529

# 93-84-A

### PETITIONER'S EXHIBIT 1

NO.	DATE	REVISIONS	DESCRIPTION

**SPELLMAN, LARSON  
&  
ASSOCIATES, INC.**  
CIVIL ENGINEERS AND LAND SURVEYORS  
SUITE 109, JEFFERSON BLDG., TOWSON, MD., 21204  
PHONE 823-3535

**EUGENE OSBORNE SR.**  
P.O. Box 429  
WESTMINSTER, MD. 21157  
Tax Account # 0116690001 Phone: (301) 840-0061  
PLAT TO ACCOMPANY ZONING VARIANCE  
FOR PROPOSED LOT #1  
"CAINEWOOD" PHASE I  
OSBORNE PROPERTY

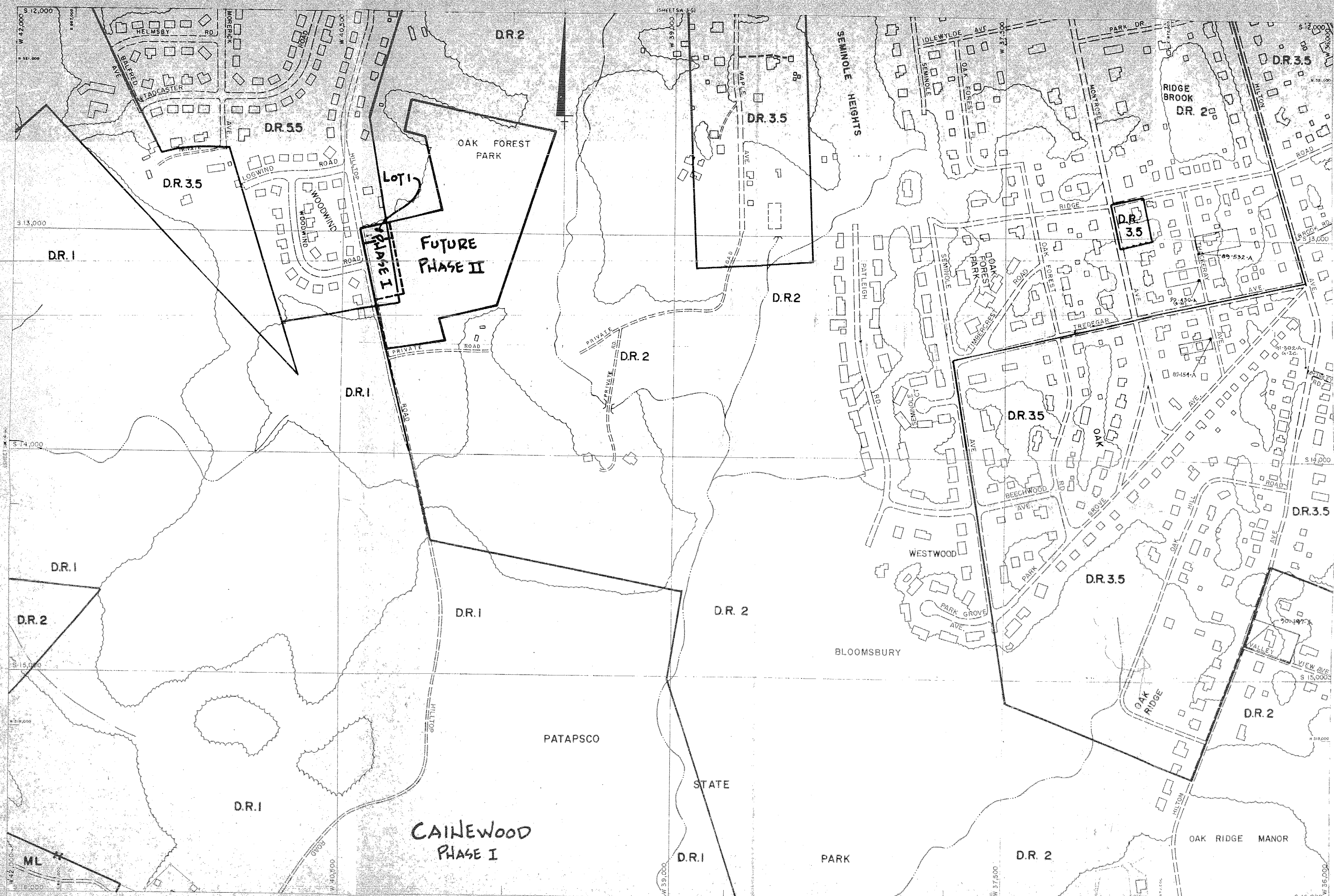
ELECTION DISTRICT 1 BALTIMORE COUNTY, MD.  
SCALE: 1"=50' DES. BY: JLL & JMB  
DATE: JULY 31, 1992 DRN BY: JMB SHT. 1 OF 1

89053









1988 COMPREHENSIVE ZONING MAP  
 Adopted by the Baltimore County Council  
 Bill No. 143-88, 145-88, 146-88, 147-88, 148-88, 149-88, 150-88  
 Chairman, County Council

THIS MAP HAS BEEN REVISED IN SELECTED AREAS.  
 TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS  
 BY BUCHART-HORN, INC., BALTIMORE, MD. 21210

# BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING OFFICIAL ZONING MAP

SCALE 1" = 200'	LOCATION CATONSVILLE	SHEET SW 4-G
DATE OF PHOTOGRAPHY JANUARY 1986		

93-84-A





CAINEWOOD  
 PHASE I  
 SCALE: 1" = 200'

BALTIMORE COUNTY  
 OFFICE OF PLANNING AND ZONING  
 PHOTOGRAPHIC MAP

SCALE 1" = 200' ±	LOCATION CATONSVILLE	SHEET SW 4-G
DATE OF PHOTOGRAPHY JANUARY 1986		

93-84-A